ferent if the firm never got possession of the documents as envisaged in the consent order. In this case, the firm in fact got what it had bargained for. The consent order was never revoked or discharged since 1948 and, as such, I hold it is still binding on the firm and the present defendant. It should be observed that in the 1947 case, the present defendant claimed a lien of the firm's documents for his counterclaim. By the 1948 consent order, the present defendant had in effect agreed to abandon his lien over the documents and in place thereof had agreed to accept a lien over the three parcels of land as security for his counterclaim. Having succeeded in his counterclaim, I am of the view that he is legally entitled to realize the fruit of his judgment by applying to court to sell the property, the titles of which have been voluntarily deposited with him at all material times as security. If that were not the intention, it is incomprehensible why the present plaintiff after acquiring the property as registered owner, should re-deposit the titles with the present defendant upon the same terms and conditions by which they were originally deposited. By re-depositing the three title deeds with the present defendant, and by giving the undertaking as contained in Exhibit AB30, it seems obvious to me that at all material times both the firm in the 1947 case, and the present plaintiff, had by their conduct rightly took the position that the order by consent was binding and that the present defendant had a lien over the land titles, notwithstanding the failure on the part of the present defendant to give the padlock key to the firm personally. They only changed their position about 22 years later, i.e. in February 1971, after judgment on the counterclaim was entered in favour of the present defendant. After such a long period, I do not think the firm or the plaintiff should be allowed to argue that the failure on the part of the present defendant to hand over the key personally renders the consent order inoperative and disentitles him to the lien on the title deeds.

Having regard to all the circumstances, I am of the view that this is not a proper case in which the court should grant the declaration sought by the plaintiff. I would therefore dismiss this claim with costs.

Claim dismissed.

Solicitors: *Morris Edgar & Co.*; *Mahalingam & Co.*

LIM CHENG CHIAT v. LIM IMM

[A.C.J. (Wan Suleiman F.J.) October 10, 1976]
[Kuala Lumpur — Civil Appeal No. 24 of 1973]

Landlord and Tenant — Rent controlled premises — Rent unlawfully increased — Notice to quit issued — Whether valid — Control of Rent Act, 1966, ss. 16(1)(a) and 16(5).

The respondent sued for vacant possession of a rent-controlled premises on the ground that the appellant was in arrears of rent. The appellant denied that he was in arrears of rent and, *inter alia*, contended that the rent at $270 per month was unlawful and that the notice to quit was bad in law. The court below held that the increase in rent unilaterally imposed was unlawful. The question raised was whether there could be rent in arrears where there was a demand for an unlawful sum.

Held, dismissing the appeal: (1) even though there had been a demand on the premises of a larger and unlawful sum, the appellant was bound to pay the rent lawfully due i.e. $220/- per month, and arrears of such rent would entitle the respondent to invoke the aid of section 16(1)(a) of the Control of Rent Act, 1966;

(2) the notice to quit was good even though it was issued consequent upon the demand for rent in excess of the lawful rent.

Cases referred to:-

(1) *Pritam Kaur* v. *Rajaratnam & Anor.* [1970] 2 M.L.J. 109.

(2) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

CIVIL APPEAL.

R. Ponnudurai for the appellant/defendant.

R. Chelliah (*Wong* with him) for the respondent.

Wan Suleiman F.J.: This is an appeal against the decision of the learned Senior President of the Sessions Court, Kuala Lumpur. The respondent in this appeal (the plaintiff in court below) sued for vacant possession of premises No. 224, Jalan Ampang, Kuala Lumpur on the ground that the appellant/defendant was in arrears of rent from June 1968 to September 1971. Respondent however limited his claim to $10,000 to bring his case within the jurisdiction of the Sessions Court. Appellant denied that he was in arrears of rent and *inter alia*, contended that the rent at $270 per month as alleged by the respondent was unlawful, and that therefore the notice to quit was bad in law.

It is not disputed that the premises was subject to the Control of Rent Act, 1966. The parties are brothers. Respondent became tenant of the premises during the Japanese Occupation, moved out some time in 1945, after which the defendant moved in, but paid rent in the name of the respondent.

In March 1966 respondent purchased the premises and appellant was attorned tenant. Rent during the Occupation period was $30 per month but it was gradually increased to $220 a month sometime in January 1961 (see D18). Sometime in 1970 or 1971 Quit Rent was raised from $2 to $879 per annum whereupon respondent decided to increase rent to $270 a month, though appellant refused to agree. Respondent alleged that appellant paid rent occasionally but never in full — sometimes $100, sometimes $200 and at other times $300, so that in all he paid "$1000 over" during the material period.

Appellant on the other hand alleged that sometime in 1968 respondent informed him in writing of his decision to increase the rent to $270 per mensem which he disregarded, continuing to pay rent at $220 a month. Unfortunately he was unable to produce the letter. The learned President noted that this ran counter to what he had said in court, where he testified "In August 1971, PW1 approached me wanting to increase the rental to $270. I offered him $250. This was after notice to quit. After being issued with notice to quit I tendered rent for $250 but it was rejected."

The appellant alleged that for the year 1969 he had paid assessment on behalf of the respondent amounting to $520 and written on the reverse of the receipt D 24. After deducting this amount, he claimed to have paid respondent the monthly rent due at $220 per month. Similarly for the year 1970 he paid assessments totalling $1180 on behalf of the respondent, a note of which payment he made on the reverse of the receipts D 25, P 30 A & C, and thereafter after deducting this sum from the rental due, he paid the balance of the rent to the respondent in cash.

The learned President concluded, and I agree with him, that the appellant must have been in arrears of rent before he could possibly set off the payment of assessments so claimed against rent due. For instance, the assessment receipt D 24 which shows date of payment as August 13, 1969 would indicate that he was in arrears of rent from January to July 1969, and the same conclusion can be drawn from the receipts D 25, P 30 A & C which bear the date of payment as March 5, May 9 and August 8 respectively.

The evidence does not clearly indicate what assessment was paid yearly. It was however conceded by counsel for the respondent that appellant had paid a total of $1700 in assessment for the years 1969 and 1970, and that respondent had paid the remainder.

The learned President concluded that the respondent was probably telling the truth. He noted that the respondent was unfortunately somewhat senile and feeble for his age — he was 68 years old, some 18 years older than the appellant and that his memory appeared to be failing him from the way in which he gave evidence. Otherwise the learned President found him to be a perfectly honest and straightforward witness. The appellant however impressed him as a sly and shrewd person who was not truthful. He pointed to items of evidence from which he had drawn this conclusion. I would with respect say that he had ample reasons for coming to this finding.

It is not in dispute that no receipt was issued to appellant by the respondent but each advanced different reasons — appellant said it was because they were brothers and trusted each other; the respondent explained that he could not possibly issue rent receipts because appellant had never paid him regularly and he found it difficult to issue receipts for periodical payments as he did not know which month they were for. The appellant even claimed to have paid rent punctually after receipt of the notice of demand dated April 27, 1970 (Exhibit P1) right up to the date of the issue of the summons on August 2, 1972, but he had never, as the learned President noted, recorded the dates of such payment or insisted on being issued with rent receipts. Yet he took the precaution to record the assessment he paid on the reverse of the assessment receipts. Therefore, again on the question of payment of rent, the learned President concluded that the appellant was lying and had never paid rent regularly. Giving him credit for the $1700 paid towards assessment and taking the $1000 over to mean $2000, he decided that the total which should be set off from rent due was therefore $3,700. Since it was not disputed that the agreed rent for the relevant period was $220 per month, rent for the period June 1, 1968 to June 30, 1973, (the latter date being the date on which the court below gave judgment) he found that the rent in arrears amounted to $9,500.

Accordingly he gave judgment for that sum, interest at 6% until realisation and costs and ordered appellant to deliver vacant possession of the premises to the respondent forthwith.

The first ground of appeal was that the learned President had erred in law and in fact in entertaining the respondent's claim when the latter was unable to state specifically whether any rental was due from appellant, and if so the specific amount.

Respondent's testimony (at page 11 of the appeal records) it was submitted, showed that appellant had not been paying full rent since the house was purchased by respondent in March 1966 which state of affairs continued until April 1970, but that the particulars of arrears in paragraph 8 of the Statement of Claim would indicate that there had been no arrears until August 1, 1968.

It is clear however that this apparent inconsistency is only because the respondent chose to confine his claim to the period June 1, 1968 to April 30, 1970 at the rate of $270 per month, which gives a total of $6,210. The learned President, in my view, rightly held that the increase in rent unilaterally imposed is unlawful.

It was conceded by the appellant however, as the learned President noted in his judgment, that the rent for the relevant period was $220 per month.

I have no reason to question his finding of fact that the appellant was lying, that during the relevant period he had not paid rent regularly, and that he had ceased making any payment altogether after receiving the notice of demand dated April 27, 1970 *i.e.* Exhibit P1. I also agree that there is evidence to support his finding that on numerous occasions during material times respondent's daughter had demanded rents from appellant on the premises.

This ground really merges into and should be considered together with the next two grounds. I need only say at this stage that as will appear in this judgment the rent due can be quantified.

The next two grounds, namely that the learned President had erred in law in holding that although the increase in rental was illegal, the demand of the illegal rent was valid, and that he had erred in law in holding that the notice to quit was valid, should be taken together.

Under section 16(1)(a) of the Control of Rent Act, 1966 the landlord may obtain possession of the premises where rent lawfully due is in arrears for 14 days or upwards. But can rent be in arrears where there is a demand for an unlawful sum?

Appellant relied on the High Court decision in *Pritam Kaur* v. *Rajaratnam & Anor.*[1] In that case it was held that "to be lawful the rent demanded must be that sanctioned by law". The Rent Assessment Board having fixed the maximum recoverable rent at $7, the only lawful rent that could be demanded by the plaintiff, it was held, was $7: even if there had been an agreement to raise rental to $46, the demand for the increased rental would be unlawful, the increase in rent not having been sanctioned by the Rent Assessment Board. It was therefore held that there having been no lawful demand for rent by the plaintiff, defendants were therefore not in arrears of rent, and no order for possession could be made.

Whilst holding that the increase in rent was unlawful (a finding with which I respectfully agree), the learned President sought to distinguish between that decision and the Court of Appeal decision in *Annamalai Chettiar* v. *Yeoh Kee Tin.*[2]

I do not think it will be necessary to distinguish the former decision from the latter decision. If my understanding of the Court of Appeal decision is correct and of course I am bound by it, then even if there had, as the learned President had found in the present case, been a demand on the premises of a larger and unlawful sum, the tenant was yet bound to pay the rent lawfully due *i.e.* $220 per month, and arrears of such rent would entitle the landlord to invoke the aid of section 16(1)(a) of the Act.

Reverting to the matter of computation of what is due, it is indeed a pity that questions were not put to determine from respondent what he meant by "$1000 over", though I would agree with counsel for respondent that in crediting appellant with having thereby paid $2000, the learned President was erring in his favour. I would therefore say that balance of $9,500 found to be due as rent is correct.

Lastly appellant contends that the notice to quit was not valid, and therefore there had been non-compliance with section 16(5) of the Act. No arguments were advanced to support this view either before me or in the court below. There is nothing, from the evidence taken as a whole to indicate that the tenancy was not a monthly one, commencing on the 1st day of the month and ending on the last day of that month. Whilst any notice short of a month would be invalid, Exhibit P4 dated July 24, 1971 gave more than a month's notice ending on August 31, 1971. I also agree with the learned President that even though demand for rent in excess of the lawful rent had led to the issue of the notice, it was nevertheless good.

I would therefore affirm the judgment of the learned President and dismiss this appeal with costs. Appellant is further ordered to deliver vacant possession of the premises within one month of the date of the delivery of this judgment.

Appeal dismissed.

Solicitors: *Rajendra & Teik Ee; Zain & Co.*

HASHIM BIN SAUD v. YAHAYA BIN HASIM & ANOR.

[O.C.J. (Harun J.) December 24, 1976]
[Alor Star — Civil Suit No. 203 of 1972]

Administrative Law — Claim for damages for wrongful detention and denial of right to consult counsel — Arrest of plaintiff — Whether justifiable — When right to counsel can be exercised — Criminal Procedure Code (F.M.S. Cap. 6), ss. 23 and 117 — Federal Constitution, Article 5(3).

Constitutional Law — Right to counsel — Person under detention — Federal Constitution, Article 5(3).

The plaintiff claimed damages for wrongful detention and denial of right to consult counsel. The plaintiff had been arrested on August 8, 1952 on suspicion of being involved in the theft of an electricity generator. On August, 9, 1952 as the investigations were not completed, the accused was produced in court and an application made for their further detention till August 19, 1972. The plaintiff was released on August 14, 1972. The plaintiff was not allowed to see counsel during the period of his detention when police investigations were in progress.

Held: (1) on the facts the arrest of the plaintiff was lawful as there was reasonable suspicion that the plaintiff was concerned with the theft. It followed that his subsequent detention by the police before production before the Magistrate and subsequently by the special order of the Magistrate was legal;

(2) where a person is lawfully detained, his detention does not become unlawful if the police deny that person his right to consult and be defended by a legal practitioner of his choice;

(3) under the Federal Constitution it is provided that a person who is arrested shall be allowed to consult and be defended by a legal practitioner of his choice but there is no provision that he be informed of that right;

(4) a lawyer has no constitutional right of access to an arrested person but it is not necessary for an arrested person to exercise his right to consult a lawyer and make his choice of a practising lawyer before that lawyer is entitled to see him;

(5) the right to consult counsel begins from the moment of arrest but the exercise of that right is postponed for so long as the arrested person is detained under section 117 of the Criminal Procedure Code;

(6) the claim for damages in this case therefore failed and must be dismissed.

Cases referred to:-

(1) *Shaaban & Ors.* v. *Chong Fook Kuan & Anor.* [1969] 2 M.L.J. 219.

(2) *Chong Fook Kuan & Anor.* v. *Shaaban & Ors.* [1968] 2 M.L.J. 53.

(3) *Lee Mau Seng* v. *Minister for Home Affairs & Anor.* [1971] 2 M.L.J. 137.

(4) *Ooi Ah Phua* v. *OCCI Kedah/Perlis* [1975] 2 M.L.J. 198.

(5) *Public Prosecutor* v. *Mah Chuen Lim & Ors.* [1975] 1 M.L.J. 95.

(6) *Sunder Singh* v. *Emperor* A.I.R. 1930 Lah. 945.

(7) *Moti Bai* v. *State* A.I.R. 1954 *Rajasthan* 241.

(8) *Ramli bin Salleh* v. *Inspector Yahya bin Hashim* [1973] 1 M.L.J. 54.

CIVIL SUIT.

Karpal Singh for the plaintiff.

Abu Talib bin Othman, Senior Federal Counsel (*Zaleha binte Zahir*, Federal Counsel, with him) for the defendants.

Harun J.: This is a claim for damages for wrongful detention and denial of right to consult counsel.